

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:  
DENISON MUNICIPAL UTILITIES  
AND FARMLAND FOODS, INC.**

**ADMINISTRATIVE CONSENT  
ORDER**

**NPDES Permit #1178001  
Crawford County, Iowa**

**NO. 2013-WW-18**

TO: Mark Ramthun  
General Manager  
Denison Municipal Utilities  
PO Box 518  
Denison, IA 51442

Jeff Bottjen  
General Manager  
Farmland Foods, Inc.  
PO Box 490  
Denison, IA 51442

**I. SUMMARY**

This administrative consent order (Order) is entered into between Denison Municipal Utilities (DMU), Farmland Foods, Inc. (Farmland Foods) and the Iowa Department of Natural Resources (DNR) for the purpose of achieving and maintaining compliance with applicable requirements related to the operation of the DMU Wastewater Treatment Plant and sanitary sewer collection system.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Dan P. Olson, Environmental Specialist Sr.  
IDNR Field Office #4  
1401 Sunnyside Lane  
Atlantic, IA 50022  
Phone: 712-243-1934

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, IA 50319  
Phone: 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. DMU is a municipal utility established pursuant to Iowa Code Chapter 388. DMU owns and operates a wastewater treatment facility pursuant to NPDES Permit # 1178001. The DMU wastewater treatment facility consists of a trickling filter plant and an activated sludge plant run in series and two 22 acre effluent holding ponds also operated in series. Commercial and residential wastewater from the City of Denison along with wastewater from APPA Fine Foods and Denison Foods is screened and combined at Lift Station No.1 and pumped to the headworks of the trickling filter plant. Effluent from the DMU Plant is sent to the Joint Lift Station. Pretreated wastewater from Farmland Foods and Tyson Food as well as the effluent from the DMU Plant is discharged to the Joint Lift Station which pumps this wastewater to the activated sludge plant. The DMU facility discharges to the Boyer River.

2. Farmland Foods owns and operates a swine packing plant located in Denison, Iowa. Farmland Foods provides pretreatment for its wastewater prior to discharge to the DMU wastewater collection and treatment system. Treatment equipment and facilities includes a rotary screen, grit chamber, DAFs, anaerobic lagoons, trickling filters, and final clarifiers. Farmland Foods has executed and is subject to an industrial treatment agreement (ITA) with DMU. The ITA was last renewed on January 6, 2012.

3. Since September of 2010, Farmland Foods has consistently violated the terms of the ITA. Exceedences primarily involve Total Kjeldahl Nitrogen (TKN), biochemical oxygen demand (BOD), and Total Suspended Solids (TSS).

4. DMU has invoked the terms of the ITA and has issued notices of noncompliance and assessed surcharges against Farmland Foods for the violations of the treatment agreement.

5. Throughout the period of noncompliance, Farmland Foods has taken actions to attempt to address the situation and to notify DMU of those efforts. To date, Farmland Foods reports having spent more than \$3.7 million dollars on corrective action projects and maintenance since 2010. On April 22, 2011, Farmland Foods notified DMU of actions undertaken to address the ITA violations. Farmland Foods has continued to submit progress reports to DMU on an approximately bimonthly basis through the date of this Order. Actions undertaken include:

- Trickling filter media replacement and related filter improvements;
- Wet well upgrades including diffused air additions;
- Lagoon cleanouts and flow distribution improvements;
- Lift station upgrades, additional pump installations and routing changes;
- Dissolved air flotation system improvements and expansion;
- The rental and use of a clarifier sludge centrifuge;
- Removal and disposal of accumulated floating sludge from lagoons; and
- Miscellaneous other improvements and repairs.

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6. Despite the efforts of the parties, Farmland Foods has continued to violate the ITA and will continue to have such violations without either changes to the pretreatment facilities of Farmland Foods and modifications of the DMU facility to allow for additional wastewater treatment capacity which may subsequently be allocated to Farmland Foods and other industrial contributors through the modification of ITAs.

7. On December 3, 2012, Farmland Foods proposed to DNR a plan and schedule to return the facility to compliance with the ITA. Pursuant to that schedule, Farmland Foods retained Reid Engineering to design necessary improvements. Pursuant to the proposal of Farmland Foods, a project design was to be completed by May 1, 2013.

8. Farmland Foods is willing to install additional treatment at its facility which will result in compliance with the ITA. On March 27, 2013, Farmland Foods contacted the DNR and reported that the corporation has committed up to \$5.5 million for treatment upgrades including biological treatment. Pursuant to that commitment, Farmland Foods commenced construction of a flow equalization tank.

9. On April 29, 2013, a meeting was held between DMU, Farmland Foods, and the DNR. At this meeting, DMU requested that Farmland Foods delay the installation of any significant additional treatment to allow time for DMU to complete upgrades to the DMU wastewater treatment facilities. This request was memorialized by a letter from DMU to the DNR on May 1, 2013. The concern of DMU is that the installation of biological treatment at the Farmland Foods facility would result in a City wastewater stream which will not support future treatment for nutrient removal due to the lower ratio of organics (BOD) to nitrogen, and may otherwise interfere with the treatment processes.

10. DMU, DNR, and Farmland Foods agree that facility improvements at the DMU wastewater treatment facility are a preferable long-term solution to accommodate the wastewater treatment needs of Farmland Foods and other industrial contributors. The parties further agree that ongoing coordination is necessary to return all parties to compliance. By agreement of the parties, an Engineering Committee has been formed consisting of representatives of DMU and Farmland Foods. The Engineering Committee will meet routinely to coordinate activities and improvements and report progress to the DNR. The first meeting of the Engineering Committee was held on April 16, 2013.

11. On July 26, 2013, the DNR approved the design flow and loading specifications for DMU as contained in DNR Schedule G, submitted by DMU. This approval is the first step necessary in beginning to design a wastewater treatment system that will fully treat the anticipated waste stream.

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**IV. CONCLUSIONS OF LAW**

The following conclusions of law are applicable in this case:

1. Pursuant to Iowa Code section 455B.173(2), the Iowa Environmental Protection Commission (Commission) shall establish, modify, or repeal water quality standards, pretreatment standards, and effluent standards in accordance with the provisions of Chapter 455B. Pursuant to Iowa Code section 455B.173(3), the Commission shall establish, modify, or repeal rules relating to the location, construction, operation and maintenance of wastewater disposal systems pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to, or modification of any wastewater disposal system. Pursuant to these statutory provisions the DNR has adopted IAC Chapter 567-62.
2. Pursuant to 567 IAC 62.1(6), the discharge of wastewater into a publicly owned treatment works or a semipublic sewage disposal system in volumes or quantities in excess of those to which a significant industrial user is committed in an ITA is prohibited. Farmland Foods has consistently discharged to the City of Denison wastewater collection system in violation of this requirement.
3. NPDES Permit #1178001 incorporates the discharge limitations established by the Farmland Foods ITA. The above-stated facts establish multiple violations of those permit limits, primarily in relation to pretreatment limitations for TKN, BOD, and TSS.

**V. ORDER**

By the execution of this Order, the DNR orders and DMU and Farmland Foods agree to the following:

1. DMU and Farmland Foods shall continue the Engineering Committee established on April 16, 2013 until the completion of the schedule set forth herein. The Engineering Committee shall consist of representatives of Farmland Foods and DMU who have the technical expertise and authorization to identify and assure operating procedures which are conducive to improved performance of the existing pretreatment and treatment systems and to identify and accomplish improvements to the pretreatment and treatment systems to ensure future compliance. The Engineering Committee shall also address the quantity of BOD, nitrogen and solids loading that DMU can accept from Farmland Foods during the construction period. Because DMU has stated that the proposed plans and specifications for the new permit may require higher or different wastewater parameters from Farmland, and because DMU has asked that Farmland Foods delay the installation of any significant additional treatment, an interim agreement to avoid surcharges or other penalties is a reasonable option for DMU and Farmland. Farmland shall submit monthly status reports to the DNR by electronic means.

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2. By December 13, 2013, DMU will submit an Antidegradation Alternatives Analysis to the DNR related to proposed improvements at the City's wastewater treatment facility. Concurrently with the submission of the Antidegradation Alternatives Analysis, DMU shall provide to Farmland Foods proposed interim discharge loadings.

3. Within 30 days of the execution of this Order, Farmland Foods shall pay an administrative penalty in the amount of \$10,000.

4. Within 30 days of the submission of the Antidegradation Alternatives Analysis, DMU and Farmland Foods will attempt to agree on interim discharge limits for Farmland Foods subject to DNR approval of the Antidegradation Alternatives Analysis. Farmland Foods and DMU acknowledge that Farmland Foods has unilaterally offered to construct a pretreatment clarifier at its own cost and that the design criteria and estimated efficiency of the clarifier has been shared with the Engineering Committee.

5. Pending the execution of an Interim Industrial Treatment Agreement between DMU and Farmland Foods, DMU agrees to waive imposition of penalties and Notices of Violation for violation of the current ITA. After the execution of an Interim Industrial Treatment Agreement between DMU and Farmland Foods, DMU agrees to waive Notices of Violation (but not surcharges or penalties) for violation of current ITA limits; however, exceedances of the interim ITA limits will be subject to the terms of the interim agreement.

6. The DNR agrees that within 30 days of the submittal of the Antidegradation Alternatives Analysis that DNR will review and respond to DMU with either an approval or comments. Within 14 days of DNR approval of the DMU Antidegradation Alternatives Analysis, DMU shall submit an updated Facility Plan. The Facility Plan shall take into account the design capacity and estimated efficiency of the Farmland pretreatment clarifier. The DMU NPDES Permit renewal application shall be submitted at the time of Facility Plan submittal in accordance with the Wastewater Permitting procedures.

7. The DNR shall notify DMU whether the DMU Facility Plan is complete within 30 days of receipt.

8. The DNR shall approve or disapprove the DMU Facility Plan within 135 days of a determination of completeness.

9. Within 60 days of Facility Plan approval, DMU shall submit preliminary plans and specifications for all wastewater treatment system improvements identified and approved in the Facility Plan to be submitted pursuant to this Order.

10. Within 30 days of receipt of the preliminary plans and specifications submitted by DMU, a meeting shall be held either in-person or by telephone to discuss comments resulting from the DNR's review of the preliminary plans and specifications.

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11. Within 150 days of Facility Plan approval, DMU shall submit final plans and specifications and a final or revised application, if necessary, for a construction permit for all DMU wastewater treatment system improvements identified and approved in the Facility Plan to be submitted pursuant to this Order.

12. Within 30 days of the DMU submittal of a complete construction permit application, the DNR shall either approve and issue a construction permit or contact DMU and notify DMU of all changes to the application which are necessary for approval.

13. Within 60 days of the issuance of a construction permit to DMU, Farmland Foods shall submit to the DNR a proposal identifying pretreatment system improvements which are compatible with the improvements identified and approved by the construction permit issued to DMU. Farmland Foods will at that same time also provide a copy of the proposal to DMU. If it is determined that these pretreatment improvements are necessary to achieve compliance with applicable limits, then Farmland Foods, DMU and the DNR agree that this Order shall be amended to incorporate and require the construction of such necessary improvements by a date to be determined at that time.

14. By May 1, 2016, DMU shall complete the construction of all wastewater treatment system improvements identified and approved in the Facility Plan to be submitted pursuant to this Order and authorized by the construction permit issued by the DNR.

15. DMU and Farmland Foods are each individually responsible for the actions that they are individually ordered to perform under the terms of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the DNR is authorized to issue an administrative order with penalties. The DNR may seek additional penalties for noncompliance with this Order or to refer such noncompliance to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief. An administrative penalty is assessed to Farmland Foods for past violations and has been determined as follows:

a. Economic Benefit. Farmland Foods has achieved an economic benefit from the failure to correct the ongoing violations of the ITA. Although significant expenditures have been made related to facility maintenance and improvements and related to monthly surcharges for violation of the ITA, these expenditures did not result in compliance. Additional measures which should have been taken include the \$5.5 million upgrade now

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authorized or the curtailment of production. An economic benefit penalty in excess of the \$10,000 administrative cap can be justified through multiple factors including the time value of the potential \$5.5 million dollar expenditure which will now be delayed or avoided and the production revenue generated during the time of continued violation. For the purpose of resolving this matter through a consensual administrative order, \$6,000 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. In this case a penalty of up to \$10,000 per day is authorized. Even if the monthly violations were calculated as only a single day per parameter, the maximum penalty authorized is in the tens of thousands of dollars. Discharging wastewater to a POTW in violation of the ITA has the potential to damage the ability of the treatment facility to provide full and effective treatment and to meet effluent limitations upon discharge to a water of the state. Continuing noncompliance for multiple years undermines the regulatory program. Based on the above considerations and the multiple days of violation, \$3,000 is assessed for this factor.

c. Culpability. Farmland Foods was aware of its continuous violation of the ITA. Despite this knowledge, adequate steps were not taken to return to compliance through either the construction of necessary improvements or the curtailment of production. Farmland Foods has paid at least \$342,500 in monthly surcharges to DMU due to the ITA violations. Farmland Foods has spent approximately \$3.7 million on maintenance and improvements during the period of noncompliance and has offered to construct and utilize additional treatment to correct the ongoing deficiencies. In light of these factors and in order to resolve this matter through a consensual administrative order, only \$1,000 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of DMU and Farmland Foods. For that reason, both parties individually waive any and all right to appeal this Order or any part thereof.

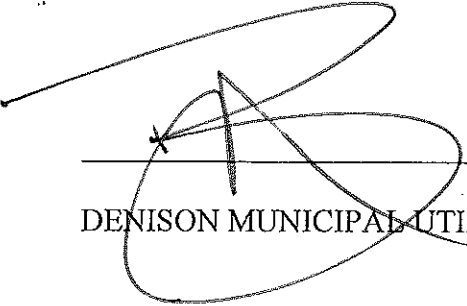
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VIII. NONCOMPLIANCE

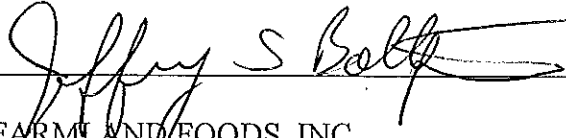
Failure to comply with this Order may result in referral to the Attorney General to obtain injunctive relief pursuant to Iowa Code section 455B.191. Compliance with section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 5<sup>th</sup> day of  
December, 2013

  
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DENISON MUNICIPAL UTILITIES

Dated this 27 day of  
November, 2013

  
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FARMLAND FOODS, INC.

Dated this 27 day of  
November, 2013

NPDES #1178001; Field Office #4; Jon Tack; Eric Wiklund; I.B.2.b